

Appeals from decisions of the Utah State Office, Bureau of Land Management, cancelling, in part, oil and gas leases U-55709 and U-55710.

Affirmed.

1. Mineral Leasing Act: Lands Subject to--Oil and Gas Leases: Lands Subject to--Wilderness Act

Lands designated by Congress as a component of the National Wilderness Preservation System pursuant to the provisions of the Wilderness Act of 1964, P.L. 88-577, 78 Stat. 890, 16 U.S.C. §§ 1131-1136 (1982), are withdrawn from disposition under the mineral leasing laws effective Jan. 1, 1984, subject to valid existing rights then existing.

2. Oil and Gas Leases: Cancellation--Oil and Gas Leases: Discretion to Lease--Oil and Gas Leases: Lands Subject to--Wilderness Act

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates. Where oil and gas leases were inadvertently issued for lands that had been designated by Congress as wilderness before issuance of the lease, the Bureau of Land Management properly cancels the lease as to those lands.

3. Oil and Gas Leases: Bona Fide Purchaser--Oil and Gas Leases: Cancellation

The protection afforded by 30 U.S.C. § 184(h)(2) (1982) to a bona fide purchaser of an oil or gas lease applies only where the predecessors-in-interest were in violation of some provision of the Act, such as the acreage limitations. It does not apply where the lease was erroneously issued for lands not subject to leasing.

APPEARANCES: Virgil C. McClintock, Esq., Denver, Colorado, for Hanes M. Dawson; Dan W. Morse, Esq., Jackson, Mississippi, for Don F. Hugus, Jr.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Hanes M. Dawson and Don F. Hugus, Jr., have appealed from decisions of the Utah State Office, Bureau of Land Management (BLM), dated August 6, 1985, cancelling, in part, oil and gas leases U-55709 and U-55710. 1/

Leases U-55709 and U-55710 were originally issued effective July 1, 1985, to Mark Merrion and Hugus, respectively, who were the successful applicants for the leases pursuant to the Federal simultaneous oil and gas leasing program. All lands described in the leases are within the Wasatch National Forest under the surface management jurisdiction of the United States Forest Service, Department of Agriculture. On June 17, 1985, Merrion had executed an assignment of lease U-55709 to Dawson; this assignment was filed with BLM on July 16, 1985, and approved on July 18, 1985, with an effective date of August 1, 1985. On June 20, 1985, Hugus executed an assignment of lease U-55710 to Dawson; this assignment was filed with BLM on July 1, 1985, but was not approved by BLM until August 30, 1985, with an effective date of August 1, 1985. 2/

On July 15 and 29, 1985, BLM received two letters from the Regional Forester, Intermountain Region, United States Forest Service, which explained that approximately 3,080 acres within lease U-55709 and 1,740 acres within lease U-55710 were within the boundaries of the High Uintas Wilderness Area, as designated by the Utah Wilderness Act of 1984, P.L. 98-428, 98 Stat. 1657. The letters described in detail the affected acreage of the leases and concluded: "Inasmuch as [the leases were] issued in error after the date of the Wilderness designation (September 28, 1984), we request that portion[s] of the lease[s] within the designated Wilderness be canceled." Based on this information, BLM issued its August 6, 1985, decisions cancelling, in part, the two leases. 3/

1/ The appeal from the decision cancelling, in part, lease U-55709 by Hanes M. Dawson is docketed IBLA 86-385. The joint appeal from the decision cancelling, in part, lease U-55710 by Dawson and Don F. Hugus, Jr., is docketed IBLA 86-386.

2/ Pursuant to 43 CFR 3106.7-4, the effective date of an assignment is the first day of the lease month following the date of filing in the proper BLM office of the completed assignment request.

3/ Specifically, as to lease U-55709, BLM stated in its decision:

"It has come to the attention of this office that the S1/2 Sec. 10; S1/2 Sec. 11; S1/2S1/2 Sec. 12; Secs. 14 and 15; N1/2 Sec. 22; W1/2NE1/4 Sec. 24; N1/2N1/2, SW1/4NE1/4, SE1/4NW1/4 Sec. 26; N1/2 Sec 27, T. 2 N., R. 13 E., SLM [Salt Lake Meridian], Utah are within the High Uintas Wilderness Area as designated by the Utah Wilderness Act (PL 98-428) of 1984. Inasmuch as the lease was issued after the enactment of the Utah Wilderness Act, the lands contained in the lease that were designated wilderness were included in error. The [Utah] Wilderness Act of 1984 states that each wilderness area shall be administered in accordance with the Wilderness Act of September 3, 1964. The Wilderness Act of 1964 requires that the minerals in lands designated by the Utah Wilderness Act

In support of their appeals, appellants first argue that the "Utah Wilderness Act of 1984 is in violation of the Constitution of the United States of America" and that "[e]ven if said * * * Act should be held to be not in violation of the Constitution * * *, the designation of lands * * * was made in a way and manner contrary to the provisions of such Act itself and the designation of such lands as wilderness is therefore invalid." This argument can be dismissed summarily. It is well established that, like other entities of the executive branch of the Federal Government, the Board is not empowered to adjudicate the constitutionality of a statute. If an enactment of Congress is in conflict with the United States Constitution, it is for the judicial branch to so declare. Ptarmigan Co., 91 IBLA 113 (1986); David & Roirdon Doremus, 61 IBLA 367 (1982). Accordingly, we decline to consider this argument made by appellants.

Appellants next contend that the "decision[s] [are] contrary to certain regulations of the Department of the Interior and the Department of Agriculture of the United States of America applicable thereto." Appellants fail, however, to indicate which regulations or in what manner the regulations have not been followed. In any event, as explained below, the facts established in the BLM decisions clearly demonstrate that BLM correctly cancelled those parts of the leases within the High Uintas Wilderness Area.

[1] The Utah Wilderness Act of 1984, supra, "designate[d] certain national forest system lands in Utah as components of the National Wilderness Preservation System [NWPS] in order to preserve the wilderness character of the land * * *." Section 101(b)(1), 98 Stat. 1657. An area designated by Congress as wilderness becomes a component of the NWPS and, as such, is managed in accordance with the provisions of the Wilderness Act of 1964, 78 Stat. 890, 16 U.S.C. §§ 1131-1136 (1982). The Wilderness Act of 1964 provides, in pertinent part, that: "Subject to valid rights then

fn. 3 (continued)

are withdrawn from disposition under all laws pertaining to mineral leasing and all amendments thereto.

"Accordingly, lease U-55709 is hereby cancelled to the extent stated above, and the lands remaining under lease U-55709 are as follows:

T. 2 N., R. 13 E., SLM, Utah

Secs. 1-3, all;

Sec. 10, N1/2;

Sec. 11, N1/2;

Sec. 12, N1/2, N1/2S1/2.

Containing 3,043.24 acres; 3,044.00 annual rental."

The decision cancelling in part lease U-55710, using the same language as the decision quoted above, describes the extent of the lands to be removed from the lease as follows: "[T]he W1/2SW1/4, SE1/4 Sec. 9; Sec. 16; SE1/4NE1/4, S1/2 Sec. 17; N1/2 Sec. 20; E1/2NE1/4, NW1/4 Sec. 21, T. 2 N., R. 13 E., SLM, Utah * * *." The lands remaining under lease were described as follows: "T. 2 N., R. 13 E., SLM, Utah, Sec. 4, lots 1-4, S1/2N1/2, E1/2SW1/4, SE1/4; Sec. 5, S1/2; Sec. 6, all; Sec. 7, lots 3, 4, NE1/4SW1/4, SE1/4; Sec. 8, all; Sec. 9, NE1/4, E1/2NW1/4; Sec. 17, N1/2NE1/4, SW1/4NE1/4, NW1/4. Containing 2,953.06 [acres]."

existing, effective January 1, 1984, the minerals in lands designated by this chapter as wilderness areas are withdrawn from all forms of appropriation under the mining law and from disposition under all laws pertaining to mineral leasing and all amendments thereto." 16 U.S.C. | 1133(d)(3) (1982). Thus, when the lands at issue were placed in the High Uintas Wilderness Area they were no longer subject to leasing under the Mineral Leasing Act.

[2] The Secretary of the Interior has the authority to cancel any lease issued contrary to law because of the inadvertence of his subordinates. Boesche v. Udall, 373 U.S. 472 (1963); D. M. Yates, 74 IBLA 159 (1983); Fortune Oil Co., 69 IBLA 13 (1982). As the Board stated in D. M. Yates, supra, at 161:

Appellant contends that Boesche v. Udall, supra, cited by BLM as authority for the cancellation of his lease * * * does not in fact authorize such a postlease cancellation. Boesche v. Udall, supra, however, observes that whereas section 31 of the [Mineral Leasing Act, as amended, 30 U.S.C. | 188 (1982)] reaches only cancellations based on postlease events, it leaves unaffected the Secretary's traditional administrative authority to cancel on the basis of the prelease factors. In fact, Boesche clearly states that the Secretary should have the power to correct his own errors. Boesche v. Udall, supra, at 478.

See also Lee Oil Properties, Inc., 85 IBLA 287, 290 n.2 (1985).

As noted in the BLM decisions, the leases in question were issued after the enactment of the Utah Wilderness Act, which itself was enacted after the effective date of the statutory withdrawal of all NWPS lands from "all laws pertaining to mineral leasing." Thus, at the time of issuance of the leases, any lands within the boundaries of the designated wilderness area had been legislatively withdrawn from any mineral leasing. Accordingly, because the authorized officer was without authority to issue leases as to these lands, it was proper for BLM to correct this error by cancelling these leases to the extent that they embraced lands in the High Uintas Wilderness Area. ^{4/}

^{4/} In a letter to the Division Land Manager, AMOCO Production Company, which apparently had subsequently obtained an assignment of the two leases, the Director of the Utah State Office explained the basis for the error:

"Immediately after the passage of the Utah Wilderness Act, there was a period of time when information concerning the exact boundaries of the wilderness areas, as derived by Congress, was unavailable to the Forest Service and Bureau of Land Management. During that time, a system was developed to screen and withhold the issuance of the leases in areas that potentially could be affected by the Utah Act, until the information concerning the boundaries was forthcoming. These leases were issued based on a Forest Service report that had become outdated upon enactment of the Utah Wilderness Bill. The leases you have purchased were overlooked in the screening process and were issued containing wilderness acreage."

[3] In view of the fact that Dawson was an assignee of the original lessees, we believe it is appropriate to note that this appeal presents an ancillary question as to the applicability of the bona fide purchaser provision set forth at 30 U.S.C. | 184(h)(2) (1982). That statute provides, inter alia, that:

The right to cancel or forfeit for violation of any of the provisions of this chapter shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, [or] interest in a lease, * * * which lease [or] interest * * * was acquired or held by a qualified person, association or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease [or] interest * * * was acquired * * * may have been canceled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

This provision provides protection to "good faith purchasers whose predecessors in interest were in violation of some provision of the act, such as acreage limitation provisions, and not for protection of purchasers of leases erroneously issued for lands not subject to noncompetitive leasing." Oil Resources, Inc., 14 IBLA 333, 337 n.1 (1974). Thus, the Board has consistently held that where the lease is subject to cancellation because BLM lacked authority to issue it, the bona fide purchaser protection afforded by 30 U.S.C. | 186(h)(2) (1982) does not apply. See Lee Oil Properties, *supra* (lands leased noncompetitively when only subject to competitive leasing); William L. Ahls, 85 IBLA 66 (1985) (lands leased under Mineral Leasing Act of 1920, when only subject to leasing under the Right-of-Way Leasing Act of 1930); Oil Resources Inc., *supra* (lands within a wildlife refuge not subject to leasing). So, too, in the instant appeal, since the State Office lacked authority to issue a lease for oil and gas in the lands included in the High Unitas Wilderness Area, the lease was a nullity, and the provisions of 30 U.S.C. | 184(h)(2) (1982) do not apply.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

James L. Burski
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge